

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PACIFIC INDEMNITY COMPANY)

15 Mountain View Road)

Warren, NJ 07061-1615)

Plaintiff,)

v.)

ALFRED KEMP, Individually and d/b/a)

KEMP PLUMBING)

P.O. Box 1322)

Pembroke, MA 02359)

and)

MARTIN SANDBORG, Individually and d/b/a)

SANDBORG PLUMBING AND HEATING)

13 Liberty Street)

Sandwich, MA 02563,)

Defendants.)

Civil Action No.: 04-11975-RWZ

**DEFENDANT ALFRED KEMP, INDIVIDUALLY AND D/B/A KEMP
PLUMBING ANSWER TO CROSSCLAIM OF DEFENDANT MARTIN SANDBORG,
INDIVIDUALLY AND D/B/A SANDBORG PLUMBING & HEATING**

1. The defendant in crossclaim admits the allegations contained in paragraph 1 of the Crossclaim.
2. The defendant in crossclaim denies the allegations contained in paragraph 2 of the Crossclaim.

WHEREFORE, the defendant in crossclaim says that the plaintiff in crossclaim against it should be dismissed and that judgment enter for the defendant in crossclaim, together with his costs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

And further answering, the defendant in crossclaim says the acts complained of were not committed by a person for whose conduct the defendant in crossclaim was legally responsible.

SECOND AFFIRMATIVE DEFENSE

And further answering, the defendant in crossclaim says that the crossclaim should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

And further answering the defendant in crossclaim says that the court lacks jurisdiction over this matter on the grounds that this is a subrogation action in which the plaintiff's insured is a Massachusetts resident and there is no diversity of citizenship.

JURY CLAIM

The defendant in crossclaim, Alfred Kemp, Individually and d/b/a Kemp Plumbing, hereby makes a claim for a trial by jury.

Respectfully submitted,
The Defendant in Crossclaim,
ALFRED KEMP, Individually and d/b/a KEMP
PLUMBING
By his attorney,

/s/ John J. Ryan, Jr.
John J. Ryan, Jr., BBO# 435620
Ryan, Coughlin & Betke, LLP
175 Federal Street
Boston, MA 02110
(617) 988-8050

CERTIFICATE OF SERVICE

I, John J. Ryan, Jr., hereby certify that on December 6, 2004, I served a copy of the within document upon the plaintiff by serving its counsel first class mail, postage prepaid to: Matthew H. Feinburg, Esq., Feinberg & Kamholtz, 125 Summer Street, 6th Floor, Boston MA 02110; Daniel Q. Harrington, Esq., Cozen & O'Connor, 1900 Market Street 3rd Floor, Philadelphia, PA 19103; Philip Tierney, Esq., Finnegan, Underwood, Ryan & Tierney, 22 Battery March Street, Boston, MA 02109.

/s/ John J. Ryan, Jr.
John J. Ryan, Jr.